

REPORT BY THE
AUDITOR GENERAL
OF CALIFORNIA

**THE STATE NEEDS TO IMPROVE
ITS PREPARATION OF CITATIONS AND
ITS ASSESSMENTS OF PENALTIES
AGAINST NURSING HOMES**

REPORT BY THE
OFFICE OF THE AUDITOR GENERAL

P-455

THE STATE NEEDS TO IMPROVE ITS PREPARATION
OF CITATIONS AND ITS ASSESSMENTS OF
PENALTIES AGAINST NURSING HOMES

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Honorable Art Agnos, Chairman
Members, Joint Legislative
Audit Committee
State Capitol, Room 3151
Sacramento, California 95814

Dear Mr. Chairman and Members:

The Office of the Auditor General presents its report concerning the Department of Health Services' Licensing and Certification Division (division). We reviewed the outcomes of the division's citation review conferences and concluded that the division needs to improve its preparation of citations. Some citations are modified or dismissed at citation review conferences because evaluators have not gathered sufficient evidence or because evaluators made technical errors in issuing the citations. In addition, the division needs to improve its assessment of penalties for violations that nursing homes repeat within a 12-month period.

Respectfully submitted,

A handwritten signature in cursive script that reads "Thomas W. Hayes".
THOMAS W. HAYES
Auditor General

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SUMMARY

The Department of Health Services (department), through its Licensing and Certification Division (division), enforces state and federal health care standards in nursing homes. The division's budget for fiscal year 1983-84 was \$14 million. As of October 1984, the division monitored the operations of approximately 1,270 licensed nursing homes that had a capacity to care for over 109,800 patients. In discharging its responsibilities for enforcing health care standards in nursing homes, the division issues citations to nursing homes that violate the standards. However, the division needs to improve its preparation of those citations and its assessment of penalties for violations that nursing homes repeat within a 12-month period.

Weaknesses in Preparing Citations

Through its ten district offices, the division inspects nursing homes and issues citations to nursing homes that violate health standards. Two of the three classes of citations carry civil penalties. Nursing homes can appeal citations to "citation review conferences" held at the district offices. At the conclusion of a citation review conference, district administrators may affirm the citation, modify the citation or penalty, or dismiss the citation.

We visited four district offices and reviewed 308 of the 497 citations that these offices issued to nursing homes from January 1, 1983, through June 30, 1984. As of April 1984, these four district offices were responsible for licensing 451 nursing homes. Nursing homes appealed to citation review conferences 142 of the citations we reviewed.

In citation review conferences, district administrators reduced or dismissed citations and penalties in 49 of the 142 citations. District administrators reduced or dismissed 16 citations

and penalties because nursing homes presented additional information to refute the citations. District administrators modified another 11 citations and penalties on grounds that nursing homes demonstrated "good faith" in correcting the violations. In these two situations, district administrators were exercising their professional judgment as provided for in statute and regulations. We did not evaluate the appropriateness of their decisions.

District administrators were compelled to reduce or dismiss 15 other citations and penalties because evaluators on the division's inspection teams did not gather enough evidence to support the citations. Seven other citations and penalties were reduced or dismissed because evaluators made technical errors in issuing the citations. The total reduction in penalties for citations reduced or dismissed because of insufficient evidence and technical errors was \$39,300.

Incorrect Penalties for Repeat Violations

The California Health and Safety Code requires the division to treble penalties for nursing homes that repeat violations within a 12-month period. Of the 308 citations in our sample, 23 citations were for violations that nursing homes repeated within a 12-month period. The division incorrectly handled the penalty assessment for 9 (39 percent) of these citations by failing to treble penalties, trebling penalties on citations not eligible for trebling, or inappropriately excusing trebled penalties in citation review conferences.

By not trebling penalties on three citations, the division underassessed nursing homes a total of \$1,400. By incorrectly trebling penalties on three other citations, the division overassessed nursing homes a total of \$1,500. The division also incorrectly dismissed a total of \$2,000 in penalties for repeat violations. Finally, in two

additional cases, the division overassessed nursing homes \$1,000 by inappropriately trebling penalties on citations that were not for violations repeated within a 12-month period.

The division incorrectly assessed penalties for repeat violations because supervisors in the district offices do not always review nursing home files to detect prior violations when assessing a penalty for a violation. In addition, district office staff have not always been certain about how to treble penalties because state law and the division's policy and procedures manual do not contain specific guidelines on assessing penalties for repeat violations.

Corrective Action

District administrators reported that they hold informal discussions with their staff after each citation review conference to explain why the citation had to be modified and to train staff in preparing citations correctly. In addition, the department plans to create a "program review team" that will review the performance of the district offices. The program review team will issue a report and recommend corrective action for any problems that it identifies.

In addition, the division has taken some corrective action to ensure that district staff appropriately assess penalties for violations that nursing homes repeat within a 12-month period. The division plans to hold regular training for district staff on the trebling of penalties. The proposed program review team will also review nursing home files in the district offices to determine whether staff are appropriately trebling penalties.

Recommendations

To improve the preparation of citations, the Department of Health Services should require the Licensing and Certification Division to implement the proposed program review team and the proposed training

in proper preparation of citations. To ensure that the division correctly assesses penalties for violations that nursing homes repeat within a 12-month period, the department should require the division to implement its plan to improve procedures for assessing penalties for violations, monitor supervisors to ensure that they review the history of a nursing home's violations when assessing penalties, and conduct regular training for staff in assessing correct penalties for repeat violations.

INTRODUCTION

The Department of Health Services (department), through its Licensing and Certification Division (division), is responsible for ensuring that long-term health care facilities, commonly known as "nursing homes," provide quality health care services to California's chronically ill or convalescent patients. Long-term health care facilities operate 24-hour skilled nursing services and provide supportive, restorative, and preventive health services to patients. As of October 1984, the division monitored the operations of approximately 1,270 licensed nursing homes capable of providing care to over 109,800 patients.

The division enforces health care standards specified in the California Health and Safety Code, in Title 22 of the California Administrative Code, and in Titles XVIII (Medicare) and XIX (Medicaid) of the Social Security Act. Through the Health Care Financing Administration of the U.S. Department of Health and Human Services, the federal government contracts with the State to certify nursing homes participating in Medicare and in the California Medical Assistance Program. For fiscal year 1983-84, the division's budget totaled approximately \$14 million; the federal government contributed over \$5.7 million of that amount. The State's General Fund appropriated almost \$8.3 million to support the division's activities.

Inspections, Citations, and Appeals

The division enforces health care standards by conducting inspections of nursing homes to assure the health and safety of patients. Inspections are conducted from ten district and subdistrict offices located throughout the State. Each district office has an administrator, one or more supervisors, and inspection teams, which are usually composed of a registered nurse evaluator and a generalist evaluator. The division must inspect each nursing home at least once every two years in accordance with the Health and Safety Code. However, nursing homes cited for any violation of health and safety standards must be inspected annually by the division during the two years following the citation. In addition to these periodic inspections, the division may inspect a nursing home during investigation of a complaint.

During an inspection or investigation, evaluators on the inspection teams may issue a citation when they determine that a nursing home violated any statutory or regulatory standard of health care. The Health and Safety Code and the California Administrative Code classify violations as "Class A," "Class B," and "Class C." Class A and Class B violations present imminent or immediate harm to patients. For these violations, the division issues Class A or Class B citations and assesses civil penalties on the nursing homes in accordance with the Health and Safety Code. Class C violations are deficiencies for which the division does not assess a penalty because they present minimal harm to patients.

For each violation identified, an evaluator requires the nursing home to prepare a plan of correction that describes what the nursing home will do to prevent a recurrence of the violation. The evaluator also specifies the period within which the nursing home must correct the violation. In most cases, the evaluator returns to the nursing home to ensure that the violation has been corrected.

A nursing home may contest a citation in a "citation review conference" held in a district office. District office administrators preside at citation review conferences, while department representatives and nursing home representatives discuss the merits of the citation. The Health and Safety Code empowers district administrators to affirm, modify, or dismiss the citation or the proposed assessment of civil penalty. The Health and Safety Code and the division's policy and regulations permit district administrators to exercise their professional judgment when considering information presented at citation review conferences. A citation review conference is considered an informal departmental hearing, and the California Administrative Code does not allow either the division or the nursing homes to record testimony at the conferences.

After a citation review conference, a nursing home may appeal a citation to the Superior Court of the county in which the nursing home is located, or it may bypass a citation review conference and appeal a citation directly to the Superior Court. A nursing home may also appeal a citation to binding arbitration if the assessed penalties

on the citation or citations total less than \$15,000. In these instances, the division and the nursing home agree on an arbitrator designated by the American Arbitration Association to hear the appeal.

Assessing and Collecting Penalties

The purpose of the citation system is to impose civil penalties on nursing homes that do not comply with state laws and regulations pertaining to patient care. If a nursing home does not comply with these laws and regulations, the Health and Safety Code provides that the division may assess a civil penalty of from \$1,000 to \$5,000 for a Class A violation and from \$50 to \$250 for a Class B violation. If the nursing home fails to correct the violation by the deadline that the division specifies in the citation, the division is required to assess an additional penalty, or "late charge," of \$50 per day for every day that the violation continues beyond the date specified for correction.

The law, however, provides several circumstances under which nursing homes do not have to pay or may delay paying the assessed penalty. For example, a nursing home is allowed to pay only the minimum penalty for a violation (\$1,000 for a Class A violation and \$50 for a Class B violation) if it does not contest the citation. In addition, if a nursing home receives a Class B citation and corrects the violation by the date specified, the division must excuse the penalty in most cases. A nursing home may also have penalties reduced

or dismissed in citation review conferences. Finally, a nursing home may delay paying the penalty on citations that it appeals to the Superior Court until after the court decision becomes final.

SCOPE AND METHODOLOGY

Our objective was to review and evaluate state policies and actions regarding (1) the issuing of citations to nursing homes, (2) the assessing and collecting of penalties on citations, and (3) the outcomes of citation review conferences. Our purpose was to determine whether the Licensing and Certification Division performs these functions in accordance with state statutes and with the division's policies and regulations. Our review covers the period from January 1, 1983, through June 30, 1984.

To identify the appropriate statutes, policies, and regulations, we reviewed sections of the California Health and Safety Code and Title 22 of the California Administrative Code that specifically relate to issuing citations, assessing and collecting penalties, and conducting citation review conferences. In addition, we reviewed the division's "citation manual" to identify policies and procedures that staff are to follow in writing citations, gathering evidence needed to document violations, and conducting citation review conferences.

To examine citations that nursing homes appealed to citation review conferences, we visited the division's district offices in Berkeley, San Diego, San Jose, and Santa Ana. As of April 1984, these four district offices were responsible for licensing 451 nursing homes. At each district office, we examined files for each nursing home that had appealed at least one citation to a citation review conference, to Superior Court, or to arbitration during the 18 months covered by our review. These nursing homes had received 308 of the 497 Class A and Class B citations that the four district offices had issued during this period. The 308 citations represent 16.7 percent of the 1,845 citations that the division had issued throughout the State from January 1, 1983, through June 30, 1984. Of the 308 citations that we reviewed, nursing homes appealed 142 to citation review conferences. These 142 citations represent 24.7 percent of the 574 citations that nursing homes appealed to citation review conferences during the period covered by our review.

We examined files to determine the penalty assessed and collected for each of the 308 citations and to determine the outcomes for the 142 citations that nursing homes appealed to citation review conferences. We did not evaluate the appropriateness of the decisions that district administrators made in exercising their professional judgment at citation review conferences as provided for in the Health and Safety Code and the division's policy and regulations.

Finally, we interviewed division officials, district administrators, supervisors, and evaluators to identify department policies and procedures used in issuing citations, assessing and collecting penalties, and rendering decisions at citation review conferences.

AUDIT RESULTS

I

THE DEPARTMENT OF HEALTH SERVICES' LICENSING AND CERTIFICATION DIVISION NEEDS TO IMPROVE ITS PREPARATION OF CITATIONS

District administrators in four districts we visited reduced or dismissed citations and penalties in 49 of the 142 citations we examined. District administrators reduced or dismissed some citations and penalties because the California Health and Safety Code and the Licensing and Certification Division's policy and regulations permit administrators to consider mitigating factors such as additional information presented after the citation was written and a nursing home's good faith efforts to correct the violations. However, administrators reduced or dismissed other citations and penalties because evaluators did not collect enough evidence or made technical errors in issuing citations. In making errors, evaluators allowed some nursing homes to avoid citations and penalties.

Outcomes of Citation Review Conferences

Nursing homes appealed to citation review conferences 142 (46 percent) of the 308 citations that we reviewed. Of the 142 citations appealed, 24 were Class A citations and 118 were Class B citations. The California Health and Safety Code permits a district

administrator to affirm, modify, or dismiss the citation or civil penalty. In affirming a citation, administrators uphold both the citation class and the amount of the penalty that was assigned to the citation. Administrators may also uphold the citation class while reducing the penalty, or they may reduce the citation class. Reducing the citation class automatically reduces the penalty in accordance with provisions in the Health and Safety Code.

At citation review conferences on the 142 citations that we examined, district administrators affirmed 93 citations. The 93 citations comprised 8 Class A citations and 85 Class B citations. District administrators upheld 13 additional citations but reduced the penalties assessed for the violations. In addition, district administrators reduced 25 citations to a lower class and dismissed 11 citations and penalties. In total, district administrators reduced or dismissed citations and penalties in 49 of the 142 citations. Sixteen of the 49 citations were Class A citations; 33 citations were Class B citations. The average reduction in penalty for the 16 Class A citations was \$4,391; for the 33 Class B citations, the average reduction in penalty was \$272. The modifications reduced the total penalties assessed by \$79,325. Table 1 on the following page shows the decisions of district administrators on the 142 citations.

TABLE 1
DISTRICT ADMINISTRATOR DECISIONS
ON 142 CITATIONS
JANUARY 1, 1983 THROUGH JUNE 30, 1984

<u>Citation Class</u>	<u>Decision</u>				<u>Total</u>	<u>Total Penalty Reduction</u>
	<u>Citation Affirmed</u>	<u>Class Upheld/ Penalty Reduced</u>	<u>Class Reduced</u>	<u>Citation Dismissed</u>		
Class A	8	6	6	4	24	\$70,250
Class B	<u>85</u>	<u>7</u>	<u>19</u>	<u>7</u>	<u>118</u>	<u>9,075</u>
Total	<u>93</u>	<u>13</u>	<u>25</u>	<u>11</u>	<u>142</u>	<u>\$79,325</u>

In our examination of files at four district offices, we identified four main reasons that district administrators cited when they reduced or dismissed citations and penalties: nursing homes provided additional information to refute the citations; nursing homes made good faith efforts to correct the violations; evaluators did not gather enough evidence to support the citations; and evaluators made technical errors in writing or processing the citations.

Table 2 on the following page shows the reasons that district administrators cited in their decisions to reduce or dismiss citations and penalties in citation review conferences. The table shows, for each of the four reasons, the class of the citations, the types of decisions, and the total reduction in penalties.

TABLE 2
CITATIONS AND PENALTIES REDUCED OR
DISMISSED IN CITATION REVIEW CONFERENCES
FOUR DISTRICT OFFICES
JANUARY 1, 1983 THROUGH JUNE 30, 1984

Reason for Decision	Citation Class	Decision		Citation Dismissed	Number	Total Penalty Reduction
		Class Upheld/ Penalty Reduced	Class and Penalty Reduced			
Nursing Homes' Additional Information	Class A	0	1	4	5	\$22,250
	Class B	<u>0</u>	<u>7</u>	<u>4</u>	<u>11</u>	<u>2,700</u>
	Subtotal	<u>0</u>	<u>8</u>	<u>8</u>	<u>16</u>	<u>24,950</u>
Nursing Homes' Good Faith Efforts	Class A	5	0	0	5	14,000
	Class B	<u>5</u>	<u>0</u>	<u>1</u>	<u>6</u>	<u>1,075</u>
	Subtotal	<u>10</u>	<u>0</u>	<u>1</u>	<u>11</u>	<u>15,075</u>
Evaluators' Insufficient Evidence	Class A	0	4	0	4	19,000
	Class B	<u>0</u>	<u>10</u>	<u>1</u>	<u>11</u>	<u>3,550</u>
	Subtotal	<u>0</u>	<u>14</u>	<u>1</u>	<u>15</u>	<u>22,550</u>
Evaluators' Technical Errors	Class A	1	1	0	2	15,000
	Class B	<u>2</u>	<u>2</u>	<u>1</u>	<u>5</u>	<u>1,750</u>
	Subtotal	<u>3</u>	<u>3</u>	<u>1</u>	<u>7</u>	<u>16,750</u>
Total		<u>13</u>	<u>25</u>	<u>11</u>	<u>49</u>	<u>\$79,325</u>

Decisions Based on
District Administrators'
Professional Judgment

In exercising their professional judgment, district administrators reduced or dismissed citations and penalties in 27 citations because of activities of nursing homes. In 16 cases, district administrators made their decisions based on additional information provided by nursing homes in citation review conferences. In 11 cases, district administrators considered nursing homes' good faith efforts to correct violations.

Additional Information

As shown in Table 2, district administrators reduced the class and penalty on eight citations and dismissed another eight citations because they considered additional information that nursing homes provided to refute the citations. The total reduction of penalties in decisions that cited this reason was \$24,950.

In some cases, the additional information provided by nursing homes was not available to evaluators when they issued the citations. For example, an evaluator issued a Class B citation with an assessed penalty of \$250 because a nursing home did not have sufficient nursing staff on duty from July 16, 1983, through July 29, 1983. Title 22 of the California Administrative Code requires nursing homes to have on duty a sufficient number of nurses to maintain a ratio of 2.8 nursing

hours for each patient day. The evaluator based the citation on a review of the nursing home's employment records for these days. In the citation review conference, however, the nursing home presented additional records that showed that the facility did have the required level of staff working on all the days except one. The nursing home explained that because it was working with these records at the time of the evaluator's visit, the records were not included in the evaluator's review.

Good Faith Efforts
To Correct Violations

District administrators also reduced or dismissed citations and penalties because nursing homes exhibited good faith in correcting the violations. Title 22 of the California Administrative Code considers "good faith" as a nursing home's awareness of applicable statutes and regulations and a diligence to comply with the requirements. District administrators also consider a nursing home's prior accomplishments or other mitigating factors in favor of the nursing home as evidence of good faith. Although the division does not have a policy on the use of good faith in reducing penalties, district administrators may be more likely to reduce a penalty based on good faith for a nursing home that has received few citations than for a nursing home that has received many citations.

We examined 142 citations appealed to citation review conferences and found that district administrators used good faith as a reason to reduce or dismiss citations and penalties in 11 citations. The total reduction of penalties was \$15,075. In most cases, district administrators considered nursing homes' efforts to correct the violation. For example, an evaluator issued a Class B citation because, for over 20 minutes, a nursing home did not have sufficient nursing staff available to respond to patients' calls for assistance during one nursing shift. In the citation review conference, the district administrator upheld the citation but reduced the penalty from \$750 to \$600 because the nursing home staff exhibited good faith in trying to call for replacement nurses immediately.

Although the California Health and Safety Code, the California Administrative Code, and the division's citation manual all contain some policies and regulations regarding citation review conferences, these sources do not contain specific instructions concerning when a district administrator should reduce or dismiss a citation. The Deputy Director of the Licensing and Certification Division stated that district administrators must exercise their professional judgment in deciding whether to uphold citations or penalties. In addition, two district administrators felt that specific legislation or policy could not be enacted to dictate how all appealed citations should be decided in a citation review conference. The district administrators felt that many citations have unique circumstances that cannot be covered under one specific policy.

In some decisions to reduce or dismiss citations and penalties, district administrators considered unique circumstances, such as new information presented by nursing homes. For example, one nursing home received a Class B citation for not giving a patient proper care to prevent the formation of decubitus ulcers, commonly known as "bedsores." The citation further cited the nursing home for not using equipment that would relieve pressure to the skin areas affected. In the citation review conference, the district administrator dismissed the citation and the \$250 penalty after the nursing home presented new evidence that the reddened areas the patient suffered developed while the patient was being treated at an acute care hospital. In presenting new evidence in the citation review conference, the nursing home was successful in avoiding being cited for a violation for which the nursing home was not responsible.

Decisions Based on Insufficient Evidence and Technical Errors

The Health and Safety Code permits district administrators to use judgment and consider mitigating factors in deciding whether to uphold or modify citations. In 22 citations, however, because evaluators either did not gather sufficient evidence to support some citations or made technical errors in writing and processing citations, district administrators were compelled to reduce or dismiss citations and penalties. The division has initiated measures to correct these problems.

Insufficient Evidence

District administrators at the four district offices decided that evaluators did not gather enough evidence to support 15 citations. As Table 2 on page 12 shows, district administrators cited this reason in reducing the class of 4 Class A citations and 10 Class B citations and in dismissing one Class B citation. These actions reduced the penalties by a total of \$22,550.

For a district administrator to uphold a Class A or Class B citation, evaluators must document that a patient's health or safety was jeopardized by the nursing home. In most of their decisions that cited insufficient evidence, district administrators stated that evaluators did not specifically document how the violations affected the health and safety of the patients involved. For example, one evaluator issued a Class B citation with an assessed penalty of \$250 because a nursing home did not administer medications at the time ordered by a physician. The evaluator noted that the nursing home did not administer an antibiotic at 6:00 a.m. as ordered. The nursing home administered the antibiotic at 12:25 p.m. after the evaluator notified the nursing home of the oversight. In the citation review conference, however, the district administrator reduced the citation to a Class C deficiency because he stated that the evaluator did not obtain evidence to document that failure to administer the antibiotic at precisely the time ordered by the physician harmed the patient.

One district administrator stated that evaluators are often unsure of the amount of evidence needed to support a citation because individual district administrators may require varying amounts of evidence. Furthermore, the district administrator stated that evaluators sometimes have little time to gather all documents relating to a violation because evaluators must perform other duties at nursing homes.

To prevent further problems with insufficient evidence, the district administrators at the four offices we visited told us that they hold informal discussions with evaluators and other staff after a citation review conference. In these discussions, the district administrators critique the way the citation was written and the evidence gathered by the evaluators, explain why they modified the citation, and discuss with the evaluators what evidence the district administrators would need to uphold future citations. The district administrators told us that these meetings serve as training sessions for their evaluators and other staff.

In June 1984, the department, in conjunction with the Department of Justice, provided training for administrators, supervisors, and evaluators on the policies and practices for writing citations, gathering evidence, and writing reports. The division videotaped these training sessions, and according to the chief of the division, these videotapes are now being used to train new evaluators, who did not receive the training in June. In the manual developed for

the training sessions, the division clarified its policy regarding evaluators' responsibilities when issuing Class A or Class B citations. The training manual also contains information for evaluators on interview techniques. Further, the division's training officer stated that the division is planning to conduct annual training for evaluators, starting in January 1985.

Technical Errors

Of the 142 citations appealed to citation review conferences, district administrators reduced or dismissed citations and penalties in 7 citations because evaluators made technical errors in writing or processing the citations. District administrators reduced or dismissed penalties in these citations by a total of \$16,750.

In two cases, evaluators made technical errors because they were unsure of the requirements for delivering citations. For example, an evaluator issued two Class B citations to a nursing home for not providing adequate care to prevent the formation of decubitus ulcers. In the citation review conference, the district administrator reduced both citations to Class C deficiencies because the evaluator issued the citations to the nursing home eight days after completing the annual inspection. The Health and Safety Code requires that evaluators issue citations within three days after completing inspections. The district administrator stated that he discussed the citation requirements with the evaluators in the two cases and admonished them to comply with the requirements in the future.

Corrective Action

The division has initiated corrective measures to reduce instances of evaluators' gathering insufficient evidence and making technical errors. The division plans to create a "program review team" consisting of four specialists who will review administrative, licensing, and enforcement practices in each district office. For example, to ensure that district offices comply with division policies and procedures on issuing citations and conducting citation review conferences, the program review team will review a sample of nursing home files in the district offices.

The program review team will issue a report containing recommendations for correcting problems that the team identifies during visits to district offices. The Chief of the division's Policy and Support Branch estimated that the program review team would begin work at district offices in November 1984.

CONCLUSION

District administrators reduced or dismissed citations and penalties in citation review conferences because they considered additional information and good faith when deciding cases. However, district administrators also reduced or dismissed citations and penalties because evaluators did not gather enough evidence to support the citations and because

evaluators made technical errors in processing citations. As a result of evaluators' technical errors, some nursing homes avoided citations and penalties. To correct the problems of insufficient evidence and technical errors, the Licensing and Certification Division provides training for evaluators and plans to create a program review team to review the citation practices at district offices.

RECOMMENDATIONS

To ensure that the Licensing and Certification Division improves its preparation of citations, the Department of Health Services should require the division to do the following:

- Implement the division's proposed program review team;
- Implement the division's plan to have the program review team sample nursing home files at each district office and determine whether the district offices are complying with division policies and procedures regarding citation review conferences; and
- Implement the division's proposed training for evaluators. The training should include topics on enforcement policies, such as writing citations and gathering and using evidence.

II

THE LICENSING AND CERTIFICATION DIVISION DOES NOT ALWAYS CORRECTLY ASSESS PENALTIES FOR REPEAT VIOLATIONS

The Licensing and Certification Division does not always correctly assess penalties required by law for violations that nursing homes repeat within a 12-month period. Of the 308 citations that we reviewed at four district offices, 23 were for violations that nursing homes had repeated within a 12-month period. However, the division incorrectly handled the penalty assessment for more than one-third of these violations and inappropriately trebled the penalties on citations that were not for violations repeated within a 12-month period. These errors occurred because supervisors failed to review nursing home files prior to assessing penalties and because supervisors and district administrators were not always certain about how to treble penalties for repeat violations.

Section 1428 of the Health and Safety Code requires the division to treble penalties for violations that nursing homes repeat within a 12-month period.* For example, the division can treble a \$250 penalty for a Class B citation to \$750 and can treble a \$5,000 penalty for a Class A citation to \$15,000. The rules on trebling are more

*The period may extend to 13 months if the first citation resulted from an annual licensing inspection rather than a complaint.

complicated, however, when a nursing home's first violation in the 12-month period is a corrected Class B citation. The law stipulates that the division shall excuse the penalty for a Class B citation that nursing homes correct by the date specified on the citation. The Attorney General has concluded that since no single penalty is assessed for the first violation, the division has no basis for trebling the penalty for the second violation. However, according to the Department of Health Services' Office of Legal Services, the Health and Safety Code does permit the division to collect a penalty for a corrected Class B citation when a nursing home repeats the same violation within a 12-month period.

Incorrect Assessments

The division is not always correctly assessing penalties for violations that nursing homes repeat within a 12-month period. Of the 308 citations issued by four district offices between January 1, 1983, and June 30, 1984, 23 citations were for repeat violations. The division incorrectly handled the penalty assessment for 9 (39 percent) of the 23 citations. The division incorrectly assessed the penalty for 6 citations and then incorrectly excused the penalty on 2 of the 6. Moreover, the division inappropriately excused the penalty for 3 other citations and trebled the penalty for 2 citations that were not for repeat violations.

In three of the six citations for which the division incorrectly assessed penalties, the division did not treble the penalties as the law provides. The division thus underassessed the nursing homes a total of \$1,400. For example, the division cited one nursing home twice within a 12-month period for exceeding the maximum allowable hot water temperature. The division issued a Class B citation to the nursing home in April 1983. The nursing home did not correct the violation by the date the division specified and was assessed \$100 in penalties. In November 1983, the division cited the nursing home a second time for violating the same regulation. The division did not, however, treble the penalty for the second violation. According to Section 1428 of the Health and Safety Code, the division should have trebled the penalty for the second violation because the nursing home paid the assessed penalty for the first violation.

In the remaining three citations for which the division incorrectly assessed penalties, the division overassessed nursing homes a total of \$1,500. For example, the division trebled the penalty on a Class B citation from \$250 to \$750 even though the previous violation was a Class B citation that the nursing home had corrected by the specified date. According to the Attorney General, when a nursing home has corrected an initial Class B citation, the division has no basis for trebling the penalty for the next violation of the same regulation.

The division inappropriately excused three penalties that it had correctly assessed and two penalties that it had incorrectly

assessed. The total amount of incorrectly excused penalties was \$2,000. For example, evaluators issued three separate Class B citations to one nursing home for violating the same regulation within a 12-month period. When the nursing home appealed the third citation to a citation review conference, the district administrator excused \$500 of the \$750 penalty because the nursing home had corrected the two prior violations by the dates specified and did not pay a penalty on the two previous citations. According to the Health and Safety Code, however, the division could have properly collected up to \$250 on the second citation and up to \$750 on the third citation.

Finally, the division overassessed two nursing homes a total of \$1,000 when supervisors incorrectly trebled penalties on citations that were not for repeat violations. For example, the division issued one nursing home a Class B citation on June 28, 1983, for failing to prevent the formation and growth of decubitus ulcers. The nursing home received a second Class B citation on September 1, 1983, for failing to properly care for patients with decubitus ulcers. The evaluator cited a similar but not identical regulation for both citations. According to a 1982 memorandum from the Department of Health Services' Office of Legal Services, the division can treble penalties for violations only when a nursing home violates identical sections of the regulations.

Reasons for Incorrect Assessments

The division does not always correctly assess penalties for violations that nursing homes repeat within a 12-month period because supervisors do not always review nursing home files prior to assessing the penalty on a citation. Division policy states that when an evaluator visits a nursing home and issues a citation, the evaluator's supervisor must review the citation and assess the penalty. According to district administrators in the offices that we visited, a supervisor should also review the nursing home's file to determine if the nursing home received a previous citation for violating the same regulation. District administrators explained that because supervisors failed to review the nursing homes' files prior to assessing the penalty on citations we examined, they did not detect previous violations of the same regulations. As a result, they did not treble the penalty as they should have on three citations in our review.

The division incorrectly assessed or excused the penalties on eight citations we reviewed because supervisors and district administrators are not always certain about how to assess penalties for such cases. For example, one district administrator stated that prior to mid-August 1983, when he discussed the policy on trebling citations with the Chief of the Field Operations Branch, he and his staff were not certain about whether they could treble the penalty on a repeat violation if no penalty was due for the first violation.

Supervisors and district administrators are not always certain of the provisions for trebling penalties because the Health and Safety Code states only that the division shall treble penalties for second or subsequent violations occurring within any 12-month period. However, the law does not define what constitutes a second or subsequent violation. Further, the division's policy and procedures manual contains no specific guidelines on trebling penalties. To clarify the law, the division has periodically issued legal memos and Licensing and Procedure Memos on trebling penalties. One district administrator stated that it would be very helpful to him if the division would revise and update its policy and procedures manual to include the division's policies on trebling penalties.

Corrective Action

The division has initiated action to remedy the problem of incorrectly assessing or excusing penalties for violations that nursing homes repeat within a 12-month period. The division issued guidelines in March 1984 to clarify its policy on trebling penalties. These guidelines prohibit trebling the penalty for a second violation if the first violation was a corrected Class B citation. In addition, the guidelines permit collecting up to \$250 for a second occurrence of a corrected Class B citation within a 12-month period. The guidelines also permit trebling the penalty for a second violation even if the violation is not the same class as the first violation; the penalty is not trebled, however, if the first citation was a corrected Class B

citation. Finally, the guidelines permit trebling the minimum penalty for violations that a nursing home repeats if the home does not contest the second citation.

In addition to issuing guidelines, the division, in conjunction with the Department of Justice, conducted training for evaluators and other staff in June 1984. The training provided evaluators with a manual that included a chart with several examples of when to treble penalties. The division scheduled further training on enforcement practices, including trebling penalties, for November 1984. Further, the division plans to create a program review team that will review a sample of nursing home files in the district offices to ensure that the district offices comply with division policies and procedures on trebling penalties.

Finally, the division will require that each nursing home file contain a "facility citation record" that provides information on all the citations that each nursing home receives. According to the division, the facility citation record will provide supervisors with a quick reference for determining whether a nursing home has repeated a violation within a 12-month period.

CONCLUSION

The Licensing and Certification Division does not always correctly assess penalties against nursing homes that repeat a

violation within a 12-month period. The division incorrectly handled the penalty assessment on 9 of 23 citations for repeat violations. The division incorrectly handled penalties on these citations because supervisors do not always review nursing home files prior to assessing penalties and because supervisors and district administrators are not always certain about when to treble penalties. The division has initiated some corrective action and is planning to implement further measures.

RECOMMENDATIONS

To ensure that the Licensing and Certification Division appropriately assesses and trebles penalties for nursing homes that repeat violations within a 12-month period, the Department of Health Services should require the division to do the following:

- Implement the division's plans to use facility citation records in each district office;
- Monitor supervisors to ensure that they review the history of a nursing home's violations when considering the assessment of penalties;

- Implement the division's proposed program review team;
and
- Conduct, as planned, the regular training for evaluators, supervisors, and district administrators on enforcement policies and procedures, including the assessment of penalties for repeat violations.

The Department of Health Services should also require the division to add to its policy and procedures manual a section on the trebling of penalties.

OTHER INFORMATION

ASSESSMENTS AND COLLECTION OF PENALTIES

The Licensing and Certification Division assessed penalties and late charges of \$245,250 for the 308 citations in our review. Table 3 below shows the disposition of the penalties and late charges for the 308 citations. Late charges are additional penalties of \$50 per day that the division can assess for every day that a violation continues beyond the date specified for correction.

TABLE 3

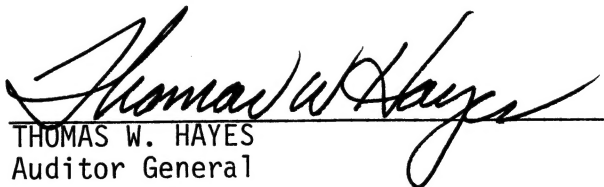
**DISPOSITION OF PENALTIES AND LATE CHARGES
ASSESSED BY FOUR DISTRICT OFFICES
JANUARY 1, 1983 THROUGH JUNE 30, 1984**

<u>Disposition</u>	<u>Citation Class and Amounts</u>		
	<u>Class A Citations</u>	<u>Class B Citations</u>	<u>Total</u>
Excused	\$ 19,750	\$54,975	\$ 74,725
Reduced or Dismissed at Citation Review Conferences	70,250	9,075	79,325
Appealed to Court	41,000	7,250	48,250
Paid or Owing	<u>27,500</u>	<u>15,450</u>	<u>42,950</u>
Total Assessed Penalties and Late Charges	<u>\$158,500</u>	<u>\$86,750</u>	<u>\$245,250</u>

As the table shows, the division excused \$74,725 because nursing homes made corrections by the date specified in the citation, because they paid the minimum fine as provided for in law, or, in some cases, because the division erred. The division reduced or dismissed \$79,325 in penalties as a result of decisions in citation review conferences. Collection of an additional sum of \$48,250 in penalties is pending until citations appealed to Superior Court are adjudicated. Of \$245,250 in fines that the division originally assessed between January 1, 1983, and June 30, 1984, nursing homes paid or owed \$42,950. Of this amount, the division had collected \$24,100 as of July 30, 1984, with a balance of \$18,850 in outstanding penalties to be collected.

We conducted this review under the authority vested in the Auditor General by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,


THOMAS W. HAYES
Auditor General

Date: October 29, 1984

Staff: Robert E. Christopher
Ann Arneill
Stephan J. Cohen
Glenn A. Ostapeck
Elaine M. Howle
Margaret A. Peters



HEALTH and WELFARE AGENCY

OFFICE OF THE SECRETARY
1600 NINTH STREET, ROOM 460
Sacramento, California 95814
(916) 445-6951

October 25, 1984

Thomas W. Hayes
Auditor General
State of California
Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Dear Mr. Hayes:

This is in response to your office's draft report entitled, "The State Needs to Improve Its Preparation of Citations and Its Assessments of Penalties Against Nursing Homes" dated October 1984.

The Department of Health Services, Licensing and Certification Division had, prior to this study, identified many of the problem areas as stated in your report and has initiated the following actions to improve the Division's performance:

- a) In June of 1984 the Licensing and Certification Division in cooperation with the Department of Health Service's Office of Legal Services, the Office of the Attorney General, and the Department of Justice, conducted several training sessions related to enforcement procedures. To further ensure an ongoing understanding of these procedures, the training program was video taped and the program's content was published. A copy of this report, entitled "Enforcement Policy and Practice Workshop" is enclosed for your information.
- (b) Citation Review Conference hearing officers have been instructed to meet with staff involved in the issuance of citations to critique citation review conference decisions and discuss any questions or concerns.
- (c) Procedural memorandums have been released regarding repeated citations and the trebling of fines. Copies of these releases have also been enclosed.

- (d) A program review team consisting of five Health Care Specialists has been established. The functions and responsibilities of this team are currently being developed. It is anticipated that this team will begin field monitoring activities during January 1985.

These and other efforts have improved the Licensing and Certification Division's enforcement activities and have promoted more uniformity among the Division's district offices.

Other specific comments related to the report have been discussed with members of your staff and the Licensing and Certification Division.

Thank you for an opportunity to review and comment on this report.

Sincerely,


for
DAVID B. SWOAP
Secretary

Enclosures *

* Auditor General's Note: The enclosures are available for review at the Office of the Auditor General.

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
State Controller
Legislative Analyst
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
Capitol Press Corps